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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Telephone Portability

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)  
)

CC Docket No. 95-116  
RM 8535

**COMMENTS OF SBC COMMUNICATIONS INC.**

SBC Communications Inc., on its behalf and on behalf of its subsidiaries, ("SBC") files these Comments with regard to certain Petitions for Reconsideration and/or Clarification<sup>1</sup> filed in relation to the Commission's Third Report and Order in the above-captioned proceeding.<sup>2</sup> SBC addresses herein specific points raised in the Petitions submitted by six of these parties: Ameritech, PA.OCA, the New York DPS, Sprint, BellAtlantic and MCI. Specifically, SBC concurs that the use of a general overhead factor is not only appropriate, but necessary. However, SBC disagrees that: (1) the Commission is authorized by the Telecommunications Act only to allocate number portability costs and not specify cost recovery measures; (2) revenues from private line,

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<sup>1</sup> Eighteen parties filed Petitions for Reconsideration and/or Clarification: Ameritech; Bell Atlantic; BellSouth; Comcast Cellular Communications ("Comcast"); Florida Public Service ("Florida PSC"); MCI Telecommunications Corporation ("MCI"); National Exchange Carrier Association, Inc. ("NECA"); New York Department of Public Service ("New York DPS"); National Telephone Cooperative Association; Personal Communications Industry Association ("PCIA"); Pennsylvania Office of Consumer Advocate ("PA.OCA"); SBC Communications Inc.; Sprint Local Telephone Companies ("Sprint"); United States Telephone Association ("USTA"); US West Inc. ("US West"); National Telephone Cooperative Association; the Oklahoma Rural Telephone Coalition and the Texas Statewide Telephone Cooperative, jointly; and WorldCom, Inc. ("WorldCom").

<sup>2</sup> *In the Matter of Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, released

toll-free, virtual private network and international services should not be included in the cost recovery methodology as end user telecommunications revenue; and (3) end user charges applied to carriers which purchase unbundled network elements ("UNEs") should be based on total element long run incremental costs ("TELRIC") and charges to resellers should be based on avoided costs.

**I. A GENERAL OVERHEAD FACTOR SHOULD BE INCLUDED AS AN ELEMENT IN LOCAL NUMBER PORTABILITY ("LNP") COST RECOVERY.**

As stated in its Petition for Clarification and Reconsideration, SBC contends that the Commission's disallowance of a general overhead factor contradicts prior Commission precedent and inappropriately precludes the local exchange carriers ("LECs") from recovering all overhead expenses. The Commission's reconsideration of this exclusion was also requested by Ameritech, BellAtlantic and Sprint.<sup>3</sup>

As aptly explained by Dr. Debra J. Aron in Attachment A of Ameritech's Petition, many of the costs that are contained in the residual between a firm's measured direct costs and total costs are actually incremental to the firm's output and increase as new services are introduced. As a result, such costs are properly recovered in the prices for individual rate elements, including those costs associated with LNP. However, most of the costs that are part of this residual cannot be specifically identified as associated with particular rate elements since the expense which would be incurred in measuring these elements far outweighs the benefit to be derived. Moreover, SBC believes the accuracy of these calculations would be questionable.

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<sup>3</sup> BellAtlantic, p. 4; Sprint, pp. 2-3; Ameritech, pp. 4-8.

As a matter of principle, there is consistent agreement that costs which are truly incremental to LNP should be recovered in the price for that service (or functionality).<sup>4</sup>

The implementation of LNP also would logically increase the amount of shared and/or common costs as the carrier's economies of scale and scope increase. Denying a carrier any recovery of such overhead costs necessarily results in its denial of full recovery, violating the principle of competitive neutrality and distorting competitive outcomes.

SBC concurs with the arguments advanced by other Petitioners in urging the Commission to permit the inclusion of general overhead factors in its LNP cost recovery methodology.

## **II. THE COMMISSION HAS THE AUTHORITY UNDER THE TELECOMMUNICATIONS ACT TO IMPLEMENT A UNIFORM COST RECOVERY MECHANISM IN THE ADVANCEMENT OF LNP IMPLEMENTATION.**

In their Petitions, the New York DPS and the PA.OCA argue that the Commission is curtailed by Section 251(e)(2) from establishing national rules for cost recovery of LNP-related costs.<sup>5</sup> This exceedingly narrow interpretation of the Commission's authority, if adopted, would detrimentally impact the very purpose the Commission is seeking to achieve pursuant to its Congressional mandate, i.e. the swift and efficient implementation of the nationwide deployment of LNP.

Section 251(e) of the Telecommunications Act clearly grants the Commission the authority and the obligation to establish telephone number portability; Section 251(e)(2) provides guidance as to how the costs associated with LNP are to be allocated by the

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<sup>4</sup> These incremental costs are the difference between a firm's total costs with and without the offering of LNP when that firm is efficiently structured to offer LNP and other services.

<sup>5</sup> New York DPS, pp. 2-6; PA.OCA, pp. 1-4.

Commission among telecommunications carriers. Nowhere in the Act does Congress confine or restrict this authority with regard to the recovery of costs so allocated. Nor does the language of the Act support the proposition that Congress has required, or in any way intended, cost recovery of this nationwide implementation to be determined on a fragmented basis at the state level.<sup>6</sup> As the Commission has properly and reasonably concluded, Congress intended the Commission to ensure that carriers bear the costs of providing LNP on a competitively neutral basis for both intrastate and interstate calls. The only way in which this objective can be met expeditiously without undue and protracted hardship is for the Commission to establish the appropriate cost recovery mechanism.<sup>7</sup>

This Commission has diligently sought to implement number portability, wherever practicable, through the most efficient means possible on a regional basis. Indeed, given the complexity of the task, the significant progress made in LNP implementation to date is due in no small part to the reasoned centralization of activity undertaken by the Commission. Without this approach, LNP would be far from a reality.

SBC respectfully disagrees with the New York DPS' conclusion that "[c]learly the states are in the best positions to make reasoned judgments about the appropriate manner and timing of cost recovery, consistent with the goals of the Act."<sup>8</sup> To the contrary, the

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<sup>6</sup> While Section 251(e)(1) of the Act provides that Commission may delegate all or part of its authority pertaining to the North American Numbering Plan to state commissions or other entities, that option does not relate to LNP cost recovery nor does it require the Commission to make any such delegation.

<sup>7</sup> SBC previously filed Comments and Reply Comments, as well as made *ex parte* contacts with the Commission on January 28, 1997, August 6, 1997, December 19, 1997, August 23, 1997 and February 5, 1998 in this proceeding related to the issue of Commission authority. These pleadings and our *ex parte* correspondence hereby are incorporated as part of these Comments.

<sup>8</sup> New York DPS, p. 6.

position argued by the New York DPS and PA.OCA would mean that carriers, which already have expended hundreds of millions of dollars in implementing number portability within the timeframe established by the Commission, would be required to further delay their recovery of related costs for an indeterminate period of time while multiple proceedings on the same issues are adjudicated before individual state commissions with differing agendas. Moreover, there is no reasonable expectation that these various proceedings when eventually concluded shall result in similar, or even consistent, dictates. How a fragmented, extenuated and laborious process could be deemed as "consistent with the goals of the Act" is beyond SBC's understanding. But then again, SBC is confused as to how an expedited, consistent national approach can be characterized as "... likely to upset the carefully crafted balance many states have struck to provide greater regulatory flexibility for the incumbents while establishing pro-competitive policies."<sup>9</sup> For these reasons, SBC endorses the Commission's decision to develop a national cost recovery mechanism and urges it to remain committed to this endeavor.

### **III. THE EXCLUSION OF SPECIFIC REVENUES FROM THE TELECOMMUNICATIONS REVENUES USED FOR THE APPORTIONMENT OF SHARED LNP COSTS IS INAPPROPRIATE AND WOULD ADVERSELY IMPACT COMPETITIVE NEUTRALITY.**

MCI argues that revenues derived from private line, toll-free, virtual private line and international services should be excluded from the calculations of telecommunications revenues used in allocating shared LNP costs. Its basis for this

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<sup>9</sup> New York DPS, p. 2.

position is that these services are not "affected" by LNP.<sup>10</sup> SBC disagrees with this assertion and cites as precedent prior cost recovery proceedings in front of the Commission. The Commission has established competitively neutral cost recovery formulas for other services, such as number administration,<sup>11</sup> using cost allocation methodologies similar to the one adopted in the Third Report and Order. This consistent and reliable precedent is maintained through the adoption of a similar formula inclusive of all international, interstate and intrastate revenues for purposes of determining the appropriate apportionment of LNP shared costs.

Moreover, contrary to MCI's position, the services MCI would exempt *are* affected by LNP. Toll-free service depends on a POTS translation before a toll-free call can be completed and the POTS line may be a ported number. Virtual private Networks allow on-net and off-net calling to potentially ported numbers. International calls terminated to customers within the United States can terminate to ported numbers. N-1 network carriers will be responsible for querying databases and as a result have responsibility for bearing a proportion of the shared costs of the NPAC.

The impact of MCI's proposal would be to transfer its avoided share of NPAC costs to the customers of the LECs. This approach will also impact the query costs of the LECs by raising their costs while reducing the costs of N-1 carriers which perform their

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<sup>10</sup> MCI, pp. 1-2.

<sup>11</sup> Second Report and Order and Memorandum Opinion and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston Ordered by the Public Utility Commission of Texas, Administration of the North American Numbering Plan, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, CC Docket No. 96-98, CC Docket No. 95-185, NSD File No. 96-8, CC Docket No. 92-237, IAD File No. 94-102, 11 FCC Rcd. 19392, 19539-19541 (August 8, 1996).

own queries. Neither result is in accordance with the tenet of competitive neutrality.

Therefore, the Commission's current plan to include all telecommunications revenues should be retained.

#### **IV. A COMMON BASIS SHOULD BE EMPLOYED FOR ALL END USER CHARGES.**

MCI contends that all charges for carriers purchasing unbundled switching or resale capabilities must be cost-based pursuant to the Act's requirements, citing Sections 251(a)(3) and (4). On this basis, it asserts that charges associated with LNP should be based on either TELRIC (for carriers which have purchased unbundled switching) or avoided costs (for resellers).<sup>12</sup> MCI's distorted logic does not support its proposed "clarification".

LNP cost recovery is a mechanism mandated by law to be developed by the Commission based upon the basis of competitive neutrality. The LNP end user charge is not a charge which enables a carrier to purchase resale capabilities nor a charge for unbundled access, such as that contemplated by Section 251(a)(3) and (4). The LNP end user charge is a mechanism designed simply to recover the implementation costs for LNP over a five-year period. It is not intended to cover the long-term recurring costs of any service. In contrast, the TELRIC cost standards MCI would have applied in determining the LNP end user charge are applicable only to long-term recurring costs associated with interconnection, collocation and UNEs.

The same flaws exist in connection with MCI's position that LNP end user charges assessed on resale carriers should be based on avoided costs. The costs included

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<sup>12</sup> MCI, pp. 6-7.

in the end user charge reflect the costs incurred to implement LNP and are not intended to cover the long-term recurring costs of any resold service.

In addition, MCI's proposal to establish three different end user charges based on three different bases, each unrelated to LNP functionality, is in apparent conflict with the statutory and regulatory requirement that cost recovery be competitively neutral. The justification for this differentiation, apart from MCI's distorted reading of the Act's requirements, has not been established. Nor has the rationale for adopting these particular cost recovery criteria been sufficiently explained. For the reasons stated above, the Commission should deny MCI's request for "clarification" in this regard.

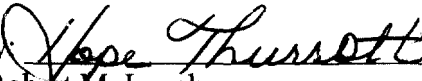
## **VI. CONCLUSION**

The Third Report and Order in general sets forth a sound and competitively neutral basis for the recovery of costs associated with LNP. However, SBC does join BellAtlantic, Sprint and Ameritech in urging the Commission to reconsider its Third Report and Order in order to allow the inclusion of a general overhead factor rather than an arduous and inclusive attempt to identify each and every cost imposed by LNP. In contrast, SBC opposes as unsupportable the positions advanced by the New York DPS, PA.OCA and MCI contesting the Commission's authority to adopt a cost recovery scheme, the inclusion of all telecommunications revenues in determining the apportionment of shared costs and the adoption of a common basis for end-user charges.



Respectfully submitted,

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September 3, 1998

## **CERTIFICATE OF SERVICE**

I, Katie M. Turner, hereby certify that the foregoing, "COMMENTS OF SBC COMMUNICATIONS, INC." in CC Docket No. 95-116 has been filed this 3<sup>rd</sup> day of September, 1998 to the Parties of Record.

A handwritten signature in cursive script that reads "Katie M. Turner". The signature is written in dark ink and is positioned above a horizontal line.

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